



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONAVIDA MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

On October 7, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlords agents (“the Landlord”) and Tenant’s legal counsel attended the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process.

Preliminary and Procedural Matters

Legal counsel for the Tenants requested that the hearing be adjourned. Counsel submitted that two of the Tenants are incapacitated due to cognitive disability and the other is elderly and in the hospital and medicated for a broken hip. Counsel asked for a two-week adjournment. When asked what testimony the Tenant would provide, counsel submitted that he would be providing direct information on the condition of the rental unit due to a water leak and that the unit is not in a condition to warrant an early end of tenancy.

The Tenants’ counsel submitted that the Tenants applied for dispute resolution and notified the Landlord of the hearing prior to the Landlord making an application for an early end of tenancy. The Tenants’ counsel stated that there is a hearing scheduled for December 4, 2020.

In response to the Tenants request for an adjournment, the Landlord was not in agreement. The Landlord stated that this is an emergency repair situation and a health situation. The Landlord stated that they have not been able to enter the unit and there may still be a water leak, contamination, and mold growth.

The Landlord stated that any delay in fixing a broken pipe will affect four other tenants.

Tenants' counsel submitted that the Tenants are not currently living in the rental unit and are agreeable to move out while repairs are completed. Tenants counsel stated that he would seek direction from the Tenants on the Landlord entering the unit to perform repairs prior to a decision being made on whether or not the tenancy should end.

Tenants' counsel stated that the Landlord already entered the unit on October 5, 2020 and the Landlord should be aware of the state of repair of the unit.

Adjournment Decision

The matter to determine is whether or not the rental unit is in a condition that is uninhabitable, and the tenancy should end early, or whether the Landlord is required to repair the unit in accordance with sections 32 and 33 of the Act. I find that having direct testimony from the Tenant is important to give the Tenant an opportunity to be heard in order to make an informed decision.

With respect to the Landlords' submission there could be a leak present in the unit, I note that the Landlord could exercise their right under section 29 of the Act that permits the Landlord to enter the rental unit with proper notice if an emergency exists and the entry is necessary to protect life or property. It appears the Landlord has entered the unit on October 5, 2020 and has the means to enter again to determine whether there is a water leak.

I note that the Tenant took steps to preserve the tenancy by making an application for dispute resolution. It appears the flood occurred on September 8, 2020 and the Landlord applied for an urgent hearing on October 7, 2020, after the Landlord was informed that the Tenant had applied for dispute resolution to prevent the Landlord from ending this tenancy due to frustration.

Based on the above, and the testimony that a hearing is already scheduled for December 4, 2020 for directly related issues, I have decided the matter should be

adjourned to be heard at the December 4, 2020 hearing when the Tenant can be present.

Based on my hearing schedule, the December 4, 2020 date is an earlier date than I would have been available to reconvene this hearing. As I only heard submissions regarding the request for adjournment, I am not seized of the matter.

Conclusion

The Landlord's application is adjourned to be heard with the Tenants' application for directly related matters scheduled for December 4, 2020 @ 9:30 am.

Both parties are expected to appear at the December 4, 2020 hearing and the Residential Tenancy Branch will send a Notice of Proceeding joining the Landlords application to the December 4, 2020 hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 2, 2020

Residential Tenancy Branch